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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/739,136	12/18/2000	W. Vincent Quintana	10001-29667	4859

7590

08/27/2003

Jenner & Block  
Patent and Trademark Docket Clerk  
One IBM Plaza, 41st Floor  
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EXAMINER

BREVARD, MAERENA W

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 08/27/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/739,136

Applicant(s)

QUINTANA ET AL.

Examiner

Maerena W. Brevard

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 68, 73, 74, 76, 77 and 82 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 68, 73, 74, 76, 77, and 82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's request for reconsideration of the withdrawal of claims 69-72, 75, and 78-81 in Paper No. 16 is acknowledged. The traversal is on the grounds that the previously examined claims (See Paper No. 8) were directed to testing and diagnosing, which was the reason for the non-election, and the applicant also believes the examination of the claims would not create an undue burden for the Examiner. This is not found persuasive because as stated previously the noted claims are directed to the individual devices and diagnostic capabilities of the system rather than the wearable computer apparatus originally claimed. In response to the applicant's assertion that the withdrawn claims include subject matter similar to canceled claims that were previously examined on their merits, there is no indication the claim language of these claims include similar subject matter.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 68, 73, 74, 76, 77, and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turley et al. in view of Ronzani et al.

Turley discloses a system including a wearable apparatus comprising a computer (200), a data collection instrument (electric probe, 530), a first camera (535), a display (432), a microphone (450, 452), a power source (644a, 644b), a harness (604), the computer is adapted to provide testing and diagnostic capability to the user, the electrical probe includes positive and

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negative test leads, to the same degree claimed; and the image data includes real time video, but does not a speaker and a second camera. However, Ronzani teaches a headset comprising a speaker (16) and a microphone (17). It would have been obvious to attach a speaker to the headset of Turley (452, Figure 4) to receive audio input as taught by Ronzani. Doing so would provide easily accessible audio input and output for the user.

Regarding claims 77 and 82, it would have been obvious to connect an additional camera to the system. Doing so would provide additional means of collecting imaging data.

#### *Response to Arguments*

4. Applicant's arguments, see Paper No. 16, filed 5/29/03, with respect to the USC 112, second paragraph rejection of claim 76 have been fully considered and are persuasive. The USC 112, 2nd paragraph rejection of claim 76 has been withdrawn.

5. Applicant's arguments filed 5/29/03 have been fully considered but they are not persuasive. The rejection as noted above reads on all of the limitations of the wearable apparatus.

#### *Conclusion*

**6. This action is non-final.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maerena W. Brevard whose telephone number is 703/305-0037. The examiner can normally be reached on M-Th; 8:00 AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703/308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703/305-0037.

*MB*  
Maerena Brevard  
August 14, 2003

  
GREGORY VIDOVICH  
SUPERVISORY PATENT EXAMINER  
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